

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IRA DAVIS,

Appellant,

v.

**THOMAS D. POWERS,
ALICE WHITTEN and TIM TRUMAN,**

Appellees.

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Civil Action No. **3:11-CV-2798-L**

MEMORANDUM OPINION AND ORDER

Before the court is Appellant Ira Davis's ("Davis") *pro se* appeal, filed October 19, 2011, from the Order on Motion by Ira Davis to Dismiss, entered by the United States Bankruptcy Court on September 29, 2011. After consideration of the record on appeal and applicable law, the court **dismisses** the appeal.

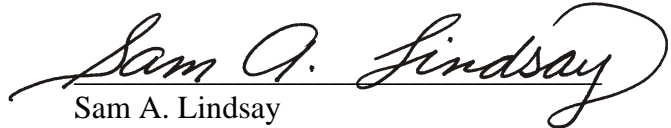
Under Bankruptcy Rule 8002, a party seeking to appeal a bankruptcy court's order to a district court has fourteen days following entry of the bankruptcy court's order to file a notice of appeal with the bankruptcy clerk. Fed. R. Bankr. P. 8002(a). Failure to file a timely notice of appeal deprives the district court of jurisdiction to consider the appeal. *Aguiluz v. Bayhi (In re Bayhi)*, 528 F.3d 393, 401 (5th Cir. 2008). "Given its jurisdictional nature, this requirement cannot be waived." *Id.* (footnote and citation omitted).

Rule 8002(c)(2) provides, however, that a party may seek an extension of time to file a notice of appeal by filing a written motion "before the time for filing a notice of appeal has expired." Fed. R. Bankr. P. 8002(c)(2). Alternatively, the bankruptcy court may extend the time

for filing a notice of appeal if a written request is filed within “21 days after the expiration of the time for filing a notice of appeal” and “upon a showing of excusable neglect.” *Id.*

The court determines that Davis’s appeal must be dismissed. His notice of appeal should have been filed on October 13, 2011; it was not filed until October 19, 2011, six days beyond the deadline. Further, the record does not reflect that he filed a written request for extension to file a notice of appeal. The bankruptcy court entered its Order on Motion by Ira Davis to Dismiss on September 29, 2011. Davis’s notice of appeal was not filed within fourteen days following entry of the bankruptcy court’s order as required by Bankruptcy Rule 8002. Therefore, the court lacks jurisdiction to consider Davis’s appeal. Accordingly, Davis’s appeal is **dismissed**.

It is so ordered this 23rd day of May, 2012.


Sam A. Lindsay
United States District Judge